IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4848 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALIMIYA GULAMRASUL SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4848 of 2004

MR PS PATEL for Petitioner No. 1

MR NAGESH SOOD AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 13/10/2004

ORAL JUDGEMENT

RULE. Mr Nagesh Sood, learned AGP waives service of Rule on behalf of the respondents.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 8.4.2004 (Annexure-U) passed by the Inspector General of Registration & Superintendent of Stamps, Gujarat State compulsorily retiring the petitioner from service after a departmental inquiry.

3. Various contentions are raised in the petition in support of the challenge to the order of compulsory retirement by way of penalty. It is, however, not necessary to refer to all of them for the simple reason that the impugned order is vitiated by the fatal flaw of not supplying the petitioner with a copy of the Inquiry Officer's report in spite of the specific demand which was made by the petitioner on 7.1.2004 (Annexure-R). When the Deputy Inspector General of Registration sent notice dated 29.12.2003 (Annexure-Q) intimating to the petitioner the date of personal hearing of 7.1.2004 which merely stated that the Inquiry Officer's report disclosed petitioner's negligence and dereliction from duty and, therefore, why any of the penalties in Rule 6 of the Gujarat Civil Service (Discipline & Appeal) Rules, 1971 should not be imposed on the petitioner. The petitioner, therefore, appeared before the Inspector General of Registration and submitted the aforesaid application dated 7.1.2004 (Annexure-R) for a copy of the Inquiry Officer's report. Instead of supplying the report, the Deputy Inspector General of Registration informed the petitioner that the rules do not provide for supplying the copy of the Inquiry Officer's report to the delinquent and, therefore, the petitioner was not entitled to get a copy of the Inquiry Officer's report. The petitioner, therefore, made his submissions dated 13.2.2004 reiterating his request for a copy of the Inquiry Officer's report and stating that copies of statements (Ganatri patrak) were also not supplied to the petitioner and that the petitioner had rendered services in the Registration Department for the last 30 years honestly and sincerely. The petitioner also relied upon the Government Circular prescribing the procedure for a departmental inquiry wherein also it is stated that the copy of the Inquiry Officer's report has to be supplied to the delinquent even where the disciplinary authority is in agreement with the findings given by the Inquiry Officer. However, the disciplinary authority appears to have brushed aside the aforesaid submissions and passed the impugned order dated 8.4.2004 holding that the charges levelled against the petitioner were proved and that the penalty of compulsory retirement was required to be imposed on the petitioner.

4. In view of the settled legal position as per the decision of this Court in MJ Ninama vs. Post Master General, 1984 GLH 800 and also the law laid down by the Apex Court in Union of India vs. Mohd. Ramzan Khan, AIR 1991 SC 471 even where the disciplinary authority is in agrement with the findings of guilt recorded by the Inquiry Officer against the delinquent, the principles of natural justice require that the disciplinary authority must supply a copy of the Inquiry Officer's report to the delinquent calling upon the employee to show cause why the disciplinary authority should not accept the Inquiry Officer's report and impose appropriate penalty.

Since respondent No.2 admittedly did not supply copy of the Inquiry Officer's report and that too in the teeth of specific request made by the petitioner delinquent, the impugned order dated 8.4.2004 has to be held to be illegal.

5. In view of the above discussion, the impugned order dated 8.4.2004 passed by the Inspector General of Registration & Superintendent of Stamps (Annexure-U) is quashed and set aside with liberty to the said respondent to issue a fresh notice to the petitioner along with a copy of the Inquiry Officer's report and to proceed with the inquiry from that stage.

It is clarified that this Court has not gone into any other contentions and it will be open to the petitioner to raise all available contentions including the contention of non-supply of certain documents which were referred to in the petitioner's submissions dated 13.2.2004 (Annexure-T) or any other documents.

It is further clarified that since the impugned order dated 8.4.2004 is set aside, the petitioner shall be deemed to be in service and shall be given such benefits as are admissible to him under the law.

6. Rule is made absolute.

(M.S. SHAH, J.)

zgs/-